S. HRG. 101-30

NOMINATION OF MICHAEL W. FARRELL

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

NOMINATION OF MICHAEL W. FARRELL TO BE ASSOCIATE JUDGE OF THE DISTRICT OF COLUMBIA COURT OF APPEALS

APRIL 21, 1989

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S401-30

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WITNESS

FRIDAY, APRIL 21, 1989

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NOMINATION OF MICHAEL W. FARRELL

FRIDAY, APRIL 21, 1989

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:10 p.m., in room SD-342, Dirksen Senate Office Building, Hon. Jim Sasser presiding.

Present: Senator Sasser.

Staff assigned to this hearing: Brian Dettelbach and Jack Sparks (Senator Glenn); Susanne Marshall (Senator Roth); and John Belferman (Senator Sasser).

OPENING STATEMENT OF SENATOR SASSER

Senator SASSER. Good afternoon. The Committee will come to order. It is a great pleasure today to have the opportunity to welcome Mr. Michael W. Farrell, who has been nominated for the position of Associate Judge of the District of Columbia Court of Appeals.

Mr. Farrell, if you would come forward, please, and take your seat there at the witness table.

Let me say before we start that this is the third time this hearing has been set, and Mr. Farrell has been most gracious in accommodating his schedule to that of the Committee Chairman. We have had to push it back from yesterday to today, and then from this morning to this afternoon.

I might say to you, Mr. Farrell, that the problem we have had is that your nomination has had to take a back seat to the budget of the United States Government.

Mr. FARRELL. I certainly understand that, Senator.

Senator SASSER. But I think we can put you in the front seat now and proceed forward.

Now, as I know, you are no stranger to the appellate process, Mr. Farrell. You have been Chief of the Appellate Division, Office of the U.S. Attorney for the District of Columbia, for the past 6 years and have served with the Division for over 11 years, I understand.

You were nominated by President Reagan for the position of Associate Judge on January 3, 1989, to serve a term of 15 years. You just barely made it before he left office. I congratulate you on that.

Mr. FARRELL. Thank you.

Senator SASSER. Since Mr. Farrell's nomination, he has been most cooperative with the staff of the Committee on Governmental Affairs in completing the information-gathering and review process, and I want to express the appreciation of the Committee, and also the appreciation of the members of the staff of this Committee for your cooperation.

This nomination has been the subject of careful review under Rule VIII of this Committee adopted in 1978, which sets out in

detail the confirmation procedure. The Committee is obligated by law to inquire into the nominee's experience, qualifications, suitability for the office for which he or she is nominated, their integrity and strength of character, and all of those things that are necessary to serve in an honorable and effective fashion in the position for which you have been nominated, Mr. Farrell.

This ensures, I think, a thorough, but also a reasonable review of the nominee's background.

Let me for the record here today summarize the procedure our Committee has followed in evaluating the nominee before us today. First, the nominee, Mr. Farrell, supplied detailed information about his education, his appointments, his professional achievements, as well as complete financial statements.

These financial statements, with the accompanying biographical information, were reviewed by Committee investigators and have been available for inspection by the public in the office of the Committee.

I am placing the biographical information of the nominee in the record of this hearing, where it will be preserved.

The FBI, of course, has conducted a thorough background investigation of Mr. Farrell. The results of that investigation have been made available to the Chairman and the ranking member of this Committee for review.

Finally, the nominee was individually interviewed by designated Committee staff members, who submitted a confidential report to members of the Committee summarizing the result of the staff's inquiry.

Now, at this time we will proceed with the testimony. Mr. Farrell, would you please rise and raise your right hand and we will put you under oath, as required by the rules?

Do you solemnly swear or affirm that the testimony you are about to give in this hearing shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. FARRELL. I do.

Senator SASSER. Mr. Farrell, I notice that you have been accompanied here today. Would you care to introduce for the record your wife?

TESTIMONY OF MICHAEL W. FARRELL, NOMINEE, TO BE ASSOCIATE JUDGE OF THE DISTRICT OF COLUMBIA COURT OF APPEALS

Mr. FARRELL. Yes, Senator. This is my wife, Germaine Farrell.

Senator SASSER. Well, Ms. Farrell, we are pleased to have you with us here this morning—this afternoon, I should say. We had a hearing set this morning, but we have had to postpone it until this afternoon.

Let me now proceed with the standard questions that we must propound to all nominees, Mr. Farrell. The first will be, do you know of any reason, personal or otherwise, which would in any way prevent you from fully and honorably discharging your responsibilities as a judge of the court to which you have been nominated by the President of the United States?

Mr. FARRELL. No, I do not, Senator.

Senator SASSER. Mr. Farrell, let me ask you to become clairvoyant here for a moment, to look into the future, and ask if you are confirmed, is it your intention, as best you can presently foresee, to serve the full 15-year term of office?

Mr. FARRELL. Yes, it is, Senator.

Senator SASSER. Now, have you been involved in civil litigation or administrative proceedings of any kind as either plaintiff, defendant, respondent, witness, or party in interest which is related directly or indirectly to the office for which you have been nominated?

Mr. FARRELL. No, Senator.

Senator SASSER. Have you or any member of your immediate family been involved in any controversy or litigation with the tax authorities of the Federal Government, the government of the District of Columbia, or any other State or local government?

Mr. FARRELL. No, Senator.

Senator SASSER. Is there anything else that you are aware of in your personal or professional background which would present any conflict of interest with the duties of the position to which you have been nominated?

Mr. FARRELL. No, Senator.

Senator SASSER. Should a potential conflict of interest arise which is not presently foreseeable—should this conflict of interest arise during your tenure as an associate judge, how would you think it best to resolve that issue?

Mr. FARRELL. Senator, should such a situation arise, I would recuse myself from any situation in which my impartiality could fairly be questioned. Put differently, I would recuse myself from any case in which there could be seen the appearance of a conflict of interest.

In particular, that probably means I will have to recuse myself from virtually all criminal cases before the District of Columbia Court of Appeals for the next year or so because most of those cases will have arisen through the Office of the United States Attorney, of which I am presently a member.

Senator SASSER. Mr. Farrell, do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress in the event that you are confirmed?

Mr. FARRELL. Yes, I do, Senator.

Senator SASSER. Mr. Farrell, I am pleased to say that the Committee has received copies of a number of letters addressed to the District of Columbia Judicial Nomination Commission, and without exception, you will be pleased to know, the writers expressed their personal and professional regard for you and their enthusiastic support of your nomination.

They include letters from the Honorable Carl McGowan, the senior circuit judge, and the Honorable Ruth Bader Ginsburg and George K. MacKinnon, all from the United States Court of Appeals for the District of Columbia Circuit; and a letter from Mr. Joseph E. DiGenova, who was then the U.S. Attorney for the District of Columbia.

A number of other distinguished members of the local bar have written in support of your nomination, and we are pleased to in-

clude these letters of support in the permanent record of this hearing.

Now, Mr. Farrell, is there anything else that you feel that you ought to tell the Committee regarding your background or your education, your professional experience, or your qualifications to be a member of the Court of Appeals of the District of Columbia?

Mr. FARRELL. Senator, first let me thank the Committee for giving me the opportunity to appear before you today, and I will try to just say a couple of very brief things, although for somebody trained in appellate advocacy, the most difficult thing is to keep your remarks brief.

As the papers indicate which I submitted to the Committee, the law is something of a second career for me. For a number of years, I was a teacher of English and the humanities and modern languages, and I would hope that that experience would provide me with something of an insight into the human conflicts and values that underlie lawsuits, which often can appear to be little more than abstract disputations among lawyers.

For most of my adult career, however, I have been an attorney with the Federal Government, first with the Department of Justice and then with the United States Attorney's office in the District of Columbia.

In that capacity, I have argued and briefed cases in most of the Federal courts of appeals around the country. I have, for most of the last decade, been the Federal Government's chief litigator in the District of Columbia Court of Appeals, where I have argued, I suppose, 15 or more cases before the court en banc.

I have also supervised the preparation of thousands of briefs and oral arguments in the United States Court of Appeals in this city and the District of Columbia Court of Appeals.

I have served on the Advisory Committee on Procedures for the District of Columbia Circuit Court of Appeals, as well as recently on a committee appointed by the District of Columbia bar to study the operations of the D.C. Court of Appeals and to make recommendations concerning possible creation of an intermediate court of appeals.

I have also served on the District of Columbia Law Revision Commission, and I have lectured fairly widely in area law schools on the subject of appellate advocacy.

In sum, I would hope that this background would provide me with some of the qualifications necessary to make a significant contribution to the work of a court which I have come to respect enormously over the last 10 or 12 years.

And I look forward eagerly to serving the citizens of this city, which, despite some recent bad publicity, I personally believe continues to be a magnificent city in its vibrancy, its beauty, and its cultural diversity.

Thank you.

Senator SASSER. Well, thank you, Mr. Farrell. Mr. Farrell, we will hold the record open until the close of business next Friday. During that time, some members may have additional questions which they might wish to propound to you in writing. If they do so, I would urge that you respond expeditiously in writing, as I know you will, so that both questions and answers may be included in

the permanent record. I am confident, then, the Committee will be able to move forward and act promptly on your nomination.

I want to thank you, Mr. Farrell, on behalf of myself and the other Committee members, for appearing before us this morning. I once again want to express our apologies for the delay which has occurred over the past week or two.

I am particularly pleased that your wife is here with you today. I am sure she is very, very proud to have her husband on the verge of mounting the Federal bench.

Thank you very much, Mr. Farrell, for being here with us today.

There being no further business to come before the Committee, the Committee will stand in recess, subject to the call of the Chair.

[Whereupon, at 2:24 p.m., the Committee was adjourned.]

APPENDIX

A. BIOGRAPHICAL INFORMATION

1. Name: Michael William Farrell
2. Position to which nominated: Associate Judge, District of Columbia Court of Appeals
3. Date of Nomination: January 3, 1989
4. Address: 3645 Winfield Lane, N.W., Washington, D.C. 20007; Office of the United States Attorney for the District of Columbia, Judiciary Center Building, 555 Fourth Street, N.W., Washington, D.C. 20001
5. Date and Place of birth: July 14, 1938; Neptune, New Jersey
6. Marital status: Married; Germaine Nejma Berrebi
7. Names and ages of children: None
8. Education: See Attachment A
9. Employment record: See Attachment B
10. Government experience: Other than the positions described in number 9, I have served on the District of Columbia Law Revision Commission since late 1987, and have served on several Bar and court-related committees in the District of Columbia.
11. Business relationships: My sole business relationship is as an informal consultant to my wife, who is the sole owner of a corporation, Gerell, Incorporated, whose sole asset is a gift shop, Sutton Place Ltd., A Gift Gallery, located at 3201 New Mexico Avenue, N.W., Washington, D.C. 20016.
12. Memberships: Member of the Bar of the District of Columbia and Maryland.
13. Political affiliations and activities:

    (a) offices with a political party or public office: None

    (b) affiliations with political parties or election comm-

ittees: None

(c) political contributions of $50 or more for past 5 years: None

14. Honors and awards: See Attachment C

15. Published writings: Contributing editor, principal author of criminal practice sections, Appellate Practice Manual for the District of Columbia Court of Appeals (Bar Association of the District of Columbia 1985)

16. Speeches: None

17. Selection:

(a) Do you know why you were chosen for this nomination by the President?: No, but I can only believe that it is because of the qualifications I have demonstrated in my nearly 15 years of government service.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?:

I have served for nearly fifteen years as an appellate advocate both in the Department of Justice and in the U.S. Attorney's Office for the District of Columbia. I have briefed in excess of one hundred appeals and argued cases in most of the United States Courts of Appeals. In the District of Columbia Court of Appeals alone I have argued more than fifteen cases before the court en banc. In addition, I have supervised a staff of some twenty two lawyers in the preparation of appellate briefs and arguments for approximately ten years, and I have lectured frequently on appellate advocacy at local universities and in continuing legal education programs of the District of Columbia Bar. I have intensive familiarity with the criminal law and its application in the District of Columbia, a matter of special importance for a court in which approximately half of the appeals are criminal. Finally, I would bring to the position a background of many years of education and training not just in the law but also in the humanities and education.

Attachment A: Education

9/70 to 12/73	American University Law School JD 1973
9/66 to 9/70	New York University; completed coursework for PhD in German Literature
9/65 to 7/66	Teachers College, Columbia University MA 1966
7/64 to 2/65	University of Mainz, West Germany
9/61 to 12/61	University of Chicago
9/56 to 6/60	University of Notre Dame BA 1960
9/52 to 9/56	Seton Hall Preparatory School, South Orange, New Jersey

Attachment B: Employment record

5/83 to present	Chief, Appellate Division, Office of the United States Attorney for the District of Columbia
10/77 to 5/83	Deputy Chief, Appellate Division, Office of the United States Attorney for the District of Columbia
10/74 to 10/77	Attorney, Criminal Division, Appellate Section, Department of Justice, Washington, D.C.
8/73 to 10/74	Law clerk to the Honorable John P. Moore, Associate Judge, Court of Special Appeals of Maryland
9/69 to 8/73	Teacher of German and English; Chairman of English Department, Georgetown Preparatory School, Rockville, Maryland
1970 to 1972 (summers)	Teacher of English as a Second Language, Georgetown University and American University, Washington, D.C.
2/67 to 5/68	Graduate Assistant Teacher of German, New York University, New York, New York
9/65 to 6/66	Teacher, St, Peters Preparatory School, Jersey City, New Jersey
11/63 to 5/64	Teacher, Berlitz School of Languages, Frankfurt, West Germany

Attachment C: Honors and awards

1988	Director's Award for equal employment opportunity, awarded by the Executive Office for U.S. Attorneys
1988	Endorsement of Women's Bar Association of the District of Columbia for nomination to the District of Columbia Court of Appeals
1985	Recipient of the Harold J. Sullivan Award, given annually by the U.S. Attorney's Office for the District of Columbia
1981	Attorney General's Special Commendation Award
1980	Department of Justice, Special Achievement Award
1968	Ottendorfer Memorial Graduate Fellowship, New York University
1961	Woodrow Wilson National Fellowship

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate? Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization? No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service? No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers. None.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated. None.

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated. None.

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy. None,

5. Explain how you will resolve any potential conflict of interest. I will recuse myself from any case involving former employers that presents a possible conflict of interest, or creates the appearance of such, and I will likewise do so in any case that impinges in any way on the business of my wife's gift shop.

6. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position? Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? No.

2. Have you ever been investigated, arrested, charged or held by any Federal, State or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense? No.

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative proceeding or civil litigation? No.

4. Have you ever been convicted (including pleas of guilty or nolo contendere) of any criminal violation other than a minor traffic offense? No.

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination. Although the matter is neither unfavorable nor favorable, I have enclosed a copy of my response to question 15 of the Personal Data Statement submitted to the White House. See Appendix D.

E. FINANCIAL DATA

(retained in committee files)

F. QUESTIONS CONCERNING STATUTORY QUALIFICATIONS

1. Are you a citizen of the United States? Yes.

2. Are you a member of the bar of the District of Columbia? Yes.

3. Have you been a member of the District of Columbia bar for at least 5 years? Yes; 1978.

5. Are you a bona fide resident of the District of Columbia?

Yes.

6. Addresses of actual places of abode for the last 5 years:

February, 1986 to present:	3645 Winfield Lane, N.W., Washington, D.C. 20007
February 1982 to February, 1986:	7504 Pepperell Drive, Bethesda, Maryland 20817

7. Have you maintained an actual place of abode in such area for at least 5 years? Yes.

8. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nomination Commission? No.

9. Have you been a member of either Commission within the last 12 months? No.

Attachment D

MICHAEL WILLIAM FARRELL 146-28-4219

Response to question 15, Personal Data Statement:

Description of past personal and business relationship between the Farrells and Hussein K. Salem

In the late 1970's my wife Germaine was Headmistress at the Congressional Schools of Virginia in Falls Church. In 1978-79 she became acquainted with Mr. and Mrs. Hussein K. Salem, whose children Khaled and Magda were students in the high school. Because the children (who were Egyptian) were having learning difficulties, my wife devoted considerable attention to them. As a result, the Salems became fond of her and invited us to dinner on two occasions.

I believe on the latter occasion, Mr. Salem expressed interest in the fact that my wife and I owned 7 acres of undeveloped land in Centreville, Virginia, and were in the process of buying the adjoining 5 acres. He offered to buy the 7 acres as an investment for his children, and suggested we seek rezoning of the combined 13 acres. In the spring of 1980 my wife and I sold the 7 acres to the Salems.

During the school year of 1980-81, my wife decided to phase out her career in education and so began part-time work in interior designing with two Bethesda firms. In the course of that work she did a consulting assignment for Mr. Salem's company, Egyptian American Transport Services Corporation, which was enlarging its quarters in Falls Church. In early 1982 Mr. Salem asked Germaine to become a part-time office manager at the firm, supervising his clerical staff during his absences. Germaine began that job in late spring of 1982.

In the fall of 1982, however, I read newspaper articles which reported that Mr. Salem and his firm were under investigation for possible fraud in overbilling the Defense Department and also detailing his association with ex-CIA official Edwin Wilson, wanted for weapons smuggling. My wife and I had had no previous knowledge of such activity or association by Salem. Germaine resigned from Egyptian American and returned to her position at

Attachment D (continued)

Congressional Schools. We had no further contact with the Salems for about a year. It was during this year, I believe, that Mr. Salem pleaded guilty to fraud-related charges in U.S. District Court in Alexandria.

Around October of 1983, Mrs. Salem contacted my wife through Mr. Salem's secretary to ask if Germaine was interested in building houses on the Centreville property with the Salem children (the son was now in college); Mr. and Mrs. Salem apparently intended to return to Egypt but wanted the children to remain here and get involved in business. I wrote a letter to Mr. Salem stating that in view of his legal situation and my position as an Assistant United States Attorney, my wife and I could not have any further association with him. He responded in a letter of December 1983, which I have kept and a copy of which is attached.

My only remaining contact with Salem occurred in 1985 when a Virginia land company offered to buy the 5 acres owned by my wife and me, but contingent on acquiring the 7 acres owned by the Salems. My attorney put the company in contact with the Salems' lawyer in the United States, and the Salems sold their piece of land to the same buyer.

Michael W. Farrell
146-28-4219

H. K. S.

Geneva, 30th of December 1983

Dear Mike,

It was a great pleasure for me to receive your letter dated November 21st, 1983.
I apologize for not writing to you earlier, due to the fact that my son in law only came back to Europe on the 15th of December and I did not receive the letter from him till a week later, when it was Christmas-time, which is the time of the year I usually have my full family-gathering. Khaled is back from school and I am more free to spent this precious time with the family.

I do appreciate your frankness in your letter and as you have noticed I have also refrained from any contacts with you, direct or indirect, during the 19 months of the problem. I permitted myself to resume these contacts after the problem was over in a pure sense of mutual respect and appropriate reason and in a ethical way.

The main reason for asking you and Germaine to join the development of the Centerville property was due to the fact that my son Khaled and my daughter Magda, who have deep love for Germaine, were thinking of developing this land on their own without my participation except for helping to lend them the necessairy funds for developing.
They were thinking of establishing a compagny in the U.S. in which Germaine owns 50% and they own the other 50%, although this is against my personal position which I have expressed to you some years ago of not being interested in developing lands, but as you know, fathers, at a certain point, should give up some of their thoughts and pave the way to their beloved following generation.

Your letter, Mike, has finally helped us all to take the decision of not getting involved to develop this land because Germaine's participation with her knowledge, honesty, and integrity was a cornerstone in my children's hope to develop this land, so they have decided to withdraw from the project. We are all open now to sell this land and if you and Germaine find it more profitable to sell the two parcels together, we should be grateful to let us know of any serious offers or any other proposal you and Germaine may think of, regarding the two parcels.

Thank you again, I wish you and Germaine a very Merry Christmas and a Happy New Year and hope to see you both in one of my future visits to the U.S. or one of your trips to Europe.

Sincerely yours,

Michael W. Farrell 146-28-4219

The Women's Bar Association
of
The District of Columbia

655 Fifteenth St. N.W., Suite 300
Washington, D.C. 20005
(202) 639-4055

October 18, 1988

Hand Delivered

Wiley A. Branton, Esq.
Chairman
District of Columbia Judicial
Nomination Commission
Sidley & Austin
1722 Eye Street, N.W.
Suite 800
Washington, D.C. 20006

RE: Michael Farrell

Dear Mr. Branton:

The Women's Bar Association of the District of Columbia is pleased to endorse Michael Farrell as a candidate for appointment as an associate judge of the District of Columbia Court of Appeals. Mr. Farrell is the chief of the appellate division of the Office of the United States Attorney for the District of Columbia and has served in that position since 1982. Prior to that time he served as the deputy chief of that division and, indeed, his entire professional career has been devoted to appellate advocacy. It would be difficult to find a candidate for the appellate bench more qualified than Mr. Farrell.

Mr. Farrell's professional credentials are enhanced by his long record of service to the bench and bar. He is a member of the advisory committee on procedures for the United States Court of Appeals for the District of Columbia Circuit, has served on planning committees for the judicial conferences of various District of Columbia courts, is a frequent lecturer and moot court judge for bar and judicial programs, and has been appointed by the Board of Governors of the District of Columbia Bar to the District of Columbia Law Revision Commission and the District of Columbia Court of Appeals Study Committee.

Mr. Farrell's co-workers, opponents and the judges before whom he appears uniformly praise his advocacy skills, the quality of his writing, his knowledge of the law, his willingness to help

others in their understanding of the law and his abilities as a consensus builder, a quality we believe is particularly important for an appointee to an appellate bench. Most significant is the praise he receives from his opponents who, notwithstanding their frequent battles, acknowledge Mr. Farrell's appreciation for the adversary process and sensitivity to his opponents' positions.

We were especially impressed by what we learned of Mr. Farrell's commitment to the concept of equal opportunity and his sensitivity to the stresses the modern professional faces. We are informed, for example, that in his role as chief of the appellate division at the U.S. Attorney's Office, Mr. Farrell has instituted part-time and flexible scheduling and introduced job- sharing, thus demonstrating his concern for the personal needs of his employees.

Mr. Farrell would also bring a diverse educational background to the bench. We note that in addition to his B.A. from the University of Notre Dame, which he earned in 1960, and his J.D. from the Washington College of Law, American University, earned in 1973, Mr. Farrell has an M.A. from Columbia University (1966) and has completed the course work necessary to earn a Ph.D. in German literature from New York University. In addition to his legal education and experience he has taught English, the humanities and German at Georgetown Preparatory School, and served for several years as the chairman of that school's English department.

Mr. Farrell's achievements and abilities have not gone unrecognized. In 1985 he was awarded the Harold J. Sullivan Award by the Office of the United States Attorney for the District of Columbia. He has also received the Attorney General's Special Commendation Award (1981) and the Department of Justice Special Achievement Award (1980).

Mr. Farrell's credentials and personal qualities have so impressed the WBA that it has voted to endorse him for a judgeship even though he is not a member of our organization. On behalf of the WBA, we urge the commission to recommend that the President consider appointing Mr. Farrell to the District of Columbia Court of Appeals.

Very truly yours,

Lucy L. Thomson/mw

Lucy L. Thomson
President, 1988-89

LLT/mw
cc: Michael W. Farrell, Esq.

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT
WASHINGTON, D. C. 20001

RUTH BADER GINSBURG
UNITED STATES CIRCUIT JUDGE

June 22, 1987

Wiley A. Branton, Chairman
Judicial Nomination Commission
Sidley & Austin
1722 Eye Street, N.W.
Suite 800
Washington, D.C. 20006

Dear Chairman Branton:

I write to recommend Michael W. Farrell for nomination to the District of Columbia Court of Appeals. Through his extraordinary service as Chief of the Appellate Division in the U.S. Attorney's Office, Mr. Farrell has demonstrated his superior talent as a lawyer and mentor. I am confident that his performance as an appellate judge would be of the highest quality.

Mr. Farrell has argued several cases before our court en banc and before three-judge panels in which I participated. His presentations rank among the very best I have seen in any courtroom. In describing the relevant facts and the state of the law, Mr. Farrell's written and oral submissions have proved consistently clear and remarkably reliable. His responses to the court's questions are unfailingly on target, courteously stated, and offered with the brevity and simplicity possible only when a fine mind has thoroughly mastered the case.

As highly as I regard Mr. Farrell's advocacy, I am equally impressed with the caring he has shown, and the model he has set, for younger members of the U.S. Attorney's Office. So mnay times I have seen him in the courtroom listening attentively to argument, encouraging and shoring up the confidence of less experienced attorneys on his staff.

In sum, for his intelligence, integrity, ability to speak and write cleanly and clearly, courteous and unflappable manner, genuine concern for the professional development of the lawyers who work under his superintendence, and uncommonly good humor and sense, Mr. Farrell has won the esteem, admiration, and appreciation of members of my court. I support his application enthusiastically and unreservedly. He would make a distinguished jurist.

Sincerely,

Ruth Bader Ginsburg

Ruth Bader Ginsburg

bcc: Michael W. Farrell

MAYER, BROWN & PLATT

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ANDREW L. FREY

WRITER'S DIRECT DIAL NUMBER
202-778-0602

June 22, 1987

Wiley A. Branton, Chairman
Sidley & Austin
1722 Eye Street, N.W.
Suite 800
Washington, D.C. 20006

Dear Chairman Branton:

I am advised that Assistant United States Attorney Michael W. Farrell has applied to be considered for the vacancy on the District of Columbia Court of Appeals that will come into being upon the retirement of Judge Nebeker. I write to urge that the Judicial Nomination Commission include Mike on the list of the three most qualified candidates for this vacancy.

I have known Mike professionally for 12 or 13 years, from the time he first joined the Appellate Section of the Criminal Division of the Department of Justice. Mike was one of those people -- of whom I have encountered few in my career -- whose exceptional talent was immediately apparent from the first piece of work. This was a draft of a response to a motion for bail or stay (I can't remember which), which I reviewed prior to its filing in the Supreme Court. It was so well organized and lucidly written -- and I was so surprised to receive work of such superior quality -- that I actually called the Appellate Section to discover who could possibly have produced it.

The promise reflected in this initial effort was consistently maintained in the work Mike did while at the Department, which usually involved the most challenging cases around. His briefs were uniformly well organized, thoroughly researched and analyzed, and beautifully written. On numerous occasions over the years, both while he was at the Criminal Division and after he joined the United States Attorney's Office, I tried to recruit Mike for the Office of the Solicitor General. Those who know me will appreciate that this is the best possible evidence of my confidence in Mike's legal talent, judgment, dedication, and ability to work well with colleagues.

I am also convinced that Mike has the temperament and balance to be a successful judge. I have never known him to be discourteous or unpleasant. Equally important, while he is a dedicated advocate, he is not a zealot. He cares about the rule of law and the coherence and fairness of legal doctrine and has always recognized the limits of the propositions he espoused and refrained from endorsing unreasonable arguments simply because they might help the government to prevail in a particular case. Accordingly, I have no doubt he would be an objective and fair-minded judge whom I would be pleased to have adjudicating any case of mine, whatever side I might be on.

I believe the District of Columbia is fortunate to have a lawyer of the talent and integrity of Mike Farrell seeking a position as a judge of its highest court, and I unreservedly endorse his candidacy.

Sincerely

Andrew L. Frey

ALF:fgd

bc: Michael W. Farrell

PUBLIC DEFENDER SERVICE
FOR THE DISTRICT OF COLUMBIA
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WASHINGTON, D.C. 20001
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July 17, 1987

Wiley A. Branton, Chairman
District of Columbia Judicial
Nomination Commission
Sidley & Austin
Suite 600
1722 I Street, N.W.
Washington, D.C. 20006

Re: Application of Michael W. Farrell

Dear Mr. Branton:

I am writing in support of the application of Michael W. Farrell for nomination as an associate judge on the District of Columbia Court of Appeals. For the past four years I have been Mike Farrell's counterpart at the Public Defender Service. To a person, the lawyers at PDS who have served in the Appellate Division have the highest admiration and respect for Mike Farrell. He is admired for the exacting standards he imposes upon his division, for the depth of knowledge and commanding policy perspectives he imparts to government briefs, and for the brilliance and compelling power of his personal advocacy, both written and oral. I trust these perceptions have been abundantly conveyed by other writers.

My own respect for Mike Farrell has been forged by the fierce and unremitting competition between our offices. In the heat of this battle, Mike Farrell has consistently conveyed appreciation for the value and delicacy of the adversary process and sensitivity to the role of his opponents. He treats his adversaries with dignity and unflappable good humor, regardless of the actions of their clients or their own intrusions on his well-grounded sense of fair play. He cares that his opponents present their cases well and lets them know that he believes that justice is advanced when both sides are vigorous and effective. I recognize in Mike Farrell a lawyer who is supremely effective because in every case he knows where the equities lie and

communicates an interest in using doctrine to achieve just results. These qualities will make a superior judge. I strongly endorse his application.

Very truly,

James Klein, Chief
Appellate Divison

October 6, 1988

Ms. Judith Lichtman, Esquire
Member
District of Columbia Judicial
Nomination Commission
c/o Women's Legal Defense Fund
2000 P Street, N.W., Suite 400
Washington, D.C. 20020

Re: Mike Farrell

Dear Ms. Lichtman:

Even though I have submitted my own name for consideration for the current vacancy on the D.C. Court of Appeals, I want to remind you of my very high regard for Mike Farrell, who is also a candidate.

Mike and I worked together on the D.C. Appellate Manual; we consult on legal problems several times a month, and have for years; I have jointly briefed and argued cases with him. I know Mike very well.

Mike is one of the finest appellate attorneys I know. He has excellent analytic skills and very sound legal judgment. There is no question that he could and would serve the Court well in developing the law. More important, Mike is a very fine person. He is sensitive to problems that others have; always considerate; generous with his help. He is also blessed with a fine, often self-deprecatory, sense of humor, and the ability to use it to reduce tension in stressful situations.

Although Mike is a career prosecutor, I am certain that he would carefully safeguard civil rights. I have found in working with him that he is always sensitive to the civil rights implications of the issues confronting him. I have no doubt that Mike would take care to see that the law makes sense in human terms; that the results in cases are sensible and fair; that real justice is done.

Finally, Mike's contributions to the careers of women professionals should be noted. All three of his current deputies are women, as are several of his former deputies.

Mike is an uncommonly well-qualified candidate, who merits the Commission's closest consideration.

Sincerely,

Charles L. Reischel

3233-C SUTTON PLACE, N.W.
WASHINGTON, D.C. 20016

July 24, 1987

Wiley A. Branton, Esquire
Chairman, Judicial Nomination Commission
c/o Sidley & Austin
1722 I Street, N.W.
Washington, D.C.

Re: Michael W. Farrell

Dear Mr. Branton:

I write to commend to you and the other members of the Commission the candidacy of Michael W. Farrell for nomination to the District of Columbia Court of Appeals.

I have known Mike for ten years and consider myself particularly fortunate to have served as his deputy in the Appellate Division of the United States Attorney's Office for almost five of those years, from 1982 until I joined the staff of the Independent Counsel earlier this year.

As you know, Mike has been a leader in the development of the criminal law in this jurisdiction for the past ten years, assisting the appellate courts in the resolution of the most complex and sensitive of legal issues. He has done this both through his own scholarship and oral advocacy and through the guidance he has generously given to his colleagues in the United States Attorney's Office and to others who have sought his counsel. I will not dwell on Mike's exceptional talents as a legal scholar and oral advocate here, however, as I am sure you have heard about them from many members of the bench, whose word on that score no doubt carries great weight with you. Rather, I will try to give you a sense of the other extraordinary qualities which make Mike an outstanding candidate for a position on the District of Columbia Court of Appeals.

Mike has a reputation as the trial lawyer's lawyer. Scores of attorneys have benefitted from the wise and patient counsel he provides on the legal, evidentiary, ethical and strategic questions that arise in the preparation and trial of cases. He renders sound and thoughtful advice in the most urgent of in-trial situations, whether the entreaty comes from the newest attorney or from a seasoned lawyer who has been trying complex cases for fifteen years. The insight and instincts Mike has developed after more than a decade of counseling trial lawyers have provided him with a full appreciation of the context in which appellate claims of trial error should be examined.

Mike is also known for his selfless dedication to the goals of the organization of which he is a part. Within the United States Attorney's Office, Mike is regarded as the division head who can be depended upon to bring others together, sublimating the needs of his own division to the welfare of the entire organization and, by his example, encouraging others to do likewise. Mike has headed the Appellate Division during a time when the caseloads in the appellate courts have increased dramatically, while the number of attorneys available to handle the work has remained essentially the same. Nevertheless, through Mike's leadership and encouragement, the Division has managed to maintain its high standard of advocacy before the appellate courts.

Mike's stamina and productivity are legendary to those who have served as his deputies. He regularly works ten or eleven-hour days at the office, only to leave and put in a few more hours at home. In an average day, he counsels numerous trial and appellate attorneys, reviews and edits several briefs, moots an attorney in preparation for an oral argument, works on a brief or oral argument of his own, and does all this while keeping abreast of the law nationwide. On a few occasions when Mike took a well-deserved vacation, the full dimensions of the crushing workload he carried on a daily basis became painfully apparent to this former deputy.

Of course, any judicial nominee must have a demonstrated record of commitment to the goals of equal opportunity and equal access to justice for all men and women, regardless of color, sex, religion or age. This is particularly true of Mike. Not only is he free from all personal bias or prejudice, but he acts without fanfare to eliminate any traces of bias or prejudice he detects around him. Mike brings out the best qualities in those who work with him and promotes them based

solely on their abilities. Moreover, he is a truly compassionate human being who cares deeply about others.

In short, I know of no one who would better serve the people of the District of COlumbia on the Court of Appeals than Mike Farrell, and I urge you to submit his name to the President for nomination to that Court.

Sincerely,

Judith Hetherton

Judith Hetherton

cc: Members of the Judicial
Nomination Commission

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT
WASHINGTON, D. C. 20001

GEORGE E. MACKINNON
UNITED STATES CIRCUIT JUDGE

June 22, 1987

Wiley A. Branton, Chairman
Sidley & Austin
1722 Eye Street, N.W., Suite 800
Washington, D.C. 20006

Re: Michael W. Farrell — Court of Appeals

Dear Mr. Branton,

For the vacancy on the District of Columbia Court of Appeals I recommend that you designate Michael W. Farrell to the Judicial Nomination Commission as a qualified candidate.

Over the years I have had an opportunity to participate in a number of cases of major import that were argued by Mr. Farrell and also have sat on a great many cases that he supervised the briefing and argument before our court. He did this in his capacity as Chief of the Appellate Division and previously as Deputy Chief of that Division in the United States Attorney's Office for the District of Columbia. I have always found his arguments, and those he supervised, to have been uniformly sound, based on fact and law. In my opinion he would make an excellent addition to the Court of Appeals for the District of Columbia.

Sincerely yours,

George E. MacKinnon

George E. MacKinnon

UNITED STATES COURT OF APPEALS
WASHINGTON, D.C. 20001

CARL McGOWAN
SENIOR CIRCUIT JUDGE

June 22, 1987

Wiley A. Branton, Chairman
Judicial Nomination Commission
Sidley & Austin
1722 Eye St., N.W., Suite 800
Washington, DC 20006

Dear Sir:

It has come to my attention that Michael Farrell is interested in the vacancy on the District of Columbia Court of Appeals created by the retirement of Judge Nebeker. This letter is written to recommend Mr. Farrell for that position.

In my nearly twenty-five years of service on my court, Mr. Farrell has appeared before me many times, as deputy chief and then as chief of the Appellate Division of the United States Attorney's Office. It has been my observation that Mr. Farrell conscientiously and effectively prepares his presentations to our court, both in written brief and oral argument. I would suppose that the experience he has had arguing cases in our court would be very helpful to him if and when he has the opportunity to serve in a judicial capacity.

I have no reservations of any kind in commending Mr. Farrell to your favorable consideration.

Very truly yours,

Carl McGowan

bc: Michael W. Farrell, Esq.

U.S. Department of Justice

United States Attorney

District of Columbia

Judiciary Center Operations
555 Fourth St. N.W.
Washington, D.C. 20001

July 6, 1987

Wiley A. Branton
Sidley & Austin
1722 Eye Street, N.W., Suite 800
Washington, D.C. 20006

Dear Chairman Branton:

I am very pleased to recommend Michael Farrell for the vacancy on the District of Columbia Court of Appeals created by Judge Nebeker's retirement. Indeed, I can think of no other person better qualified for that position.

Mike has been the Chief of our Appellate Division since late 1982. During that time he has shouldered primary supervisory responsibility for the filing of, on an average, five hundred criminal briefs a year in the D.C. Court of Appeals. In fact this year the number will be closer to seven hundred. He thus can be said to know the court's "business" as well as any attorney in the city, bar none. During his stewardship we have been exceptionally proud of the quality of our written and oral submissions in both of our courts of appeals; indeed, judges have frequently commented to me on the signs of rigorous appellate training and supervision by Mike which they see in our Assistants on a daily basis.

Mike has also taken it upon himself to handle personally the bulk of our office's most important and visible criminal appeals -- the John Hinckley case, the Abscam and Scientology cases, and most recently the critical one-house veto case of Gary v. United States come to mind. His briefing of these cases has been of the very highest quality, and his oral arguments have set an exacting standard for others to emulate. Indeed, an internal Department of Justice evaluation of our office done in 1983 reported that then Chief Judge Newman, besides lauding Mike's administrative skills, called him one of the best oral advocates ever to appear before him.

I am convinced also that Nike possesses the character and temperament to be a distinguished appellate judge. He has the breadth of understanding to see all facets of an issue, and while he has been a forceful advocate for the government, he possesses the objectivity and fidelity to legal principles that insure he will decide matters that come before him fairly and impartially.

For these reasons, I recommend him for the judicial vacancy without reservation.

Yours truly,

Joseph E. diGenova
United States Attorney

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JOHN W. KARR
WILLIAM G. MCLAIN
ANN B. RICHARDSON

OF COUNSEL
TERENCE J. ANDERSON
CORAL GABLES, FLORIDA

December 27, 1988

Arthur D. Culvahouse, Jr., Esq.
Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. Culvahouse:

The purpose of this letter is to register my support for the nomination of Michael W. Farrell to occupy the current vacancy on the District of Columbia Court of Appeals.

For some ten years, Mr. Farrell and I have been co-lecturers on local appellate practice at Continuing Legal Education programs at the Georgetown University Law Center; since June, 1987, we have served together as members of the District of Columbia Law Revision Commission; and perhaps most tellingly, we have from time to time appeared on opposite sides of cases before the D.C. Court of Appeals. . From my CLE and Commission experiences with Mr. Farrell, I know him to be a lawyer who is not only deeply committed to the administration of justice in the District of Columbia, but one who is also willing to work tirelessly for its improvement. And from opposing him in the Court of Appeals, I know him to be an advocate in the highest tradition of the bar: a lawyer of uncommon intelligence who fights tenaciously for his client's position, but always with candor and fairness.

As an appellate judge, Mr. Farrell will be a credit to the court and to the city. I strongly urge his nomination.

Sincerely,

John W. Karr

Mike - Hope this helps some.
Regards -

97-595 (40)